

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

LEWIS HEACKER,)	
)	
Plaintiff,)	
)	
vs.)	Case No. 09-4270-CV-W-GAF
)	
AMERICAN FAMILY MUTUAL)	
INSURANCE COMPANY, et al.,)	
)	
Defendants.)	

ORDER GRANTING PARTIAL SUMMARY JUDGMENT

Presently before the Court is Defendant American Family Mutual Insurance Company's ("American Family") Motion for Partial Summary Judgment filed pursuant to Fed. R. Civ. P. 56. (Doc. # 46). American Family argues that Plaintiff Lewis Heacker ("Plaintiff") may not, as a matter of law, recover under Policy No. 15-BL2465-01 any award for punitive damages entered against Defendant Jessica Wright ("Defendant Wright") in the underlying action. *Id.* Plaintiff does not directly oppose the Motion.¹ (Doc. # 66).

The present action arises from Plaintiff's Petition for Equitable Garnishment and Damages ("Petition"), which was originally filed in the Circuit Court of Jackson County, Missouri, and was later removed to this Court. (Doc. ## 1, 1-1). Prior to filing the Petition, Plaintiff had received a \$7.3 million judgment in the underlying case arising from Defendant Wright's tortious conduct.

¹Plaintiff argues American Family may nonetheless be liable for interest presently accruing on his punitive damage award in the underlying action; however, this issue was not raised by American Family in the present Motion and is not presently ripe for adjudication. Therefore, the issue of liability stemming from interest accruing on Plaintiff's punitive damage award shall not be addressed in this Order.

(Doc. # 40). The judgment allocated \$2.3 million dollars of damages as an award for compensatory damages and \$5 million as punitive damages. (Petition, ¶ 21-22; Doc. # 66, p. 2). Plaintiff alleges from 2007 to 2008, Defendant Wright was insured under a policy of liability insurance issued by American Family, Policy No. 15-BL2465-01 (the “Policy”). (Petition, ¶ 13; Doc. # 66, p. 2). Plaintiff seeks an award against all defendants in this action, “jointly and severally, in the amount of the Judgment for \$7.3 million, plus taxable cost.” (Petition, Prayer for Relief, p. 5).

The Policy states, “We will pay, up to our limit, compensatory damages for which any insured is legally liable because of bodily injury or property damages caused by an occurrence covered by this policy.” (The Policy, LIABILITY COVERAGES - SECTION II, COVERAGE D - PERSONAL LIABILITY COVERAGE, p. 9 of 16). The Policy further states, “Coverage D - Personal Liability does not apply to . . . Punitive Damages. We will not cover punitive or exemplary damages.” (The Policy, EXCLUSIONS - SECTION II, p. 12 or 16, ¶ 4).

Summary judgment should be granted if the “pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(c). The Court must “enforce insurance contracts as written unless an ambiguity requires [it] to impose various rules of interpretation.” *Allstate Ins. Co. v. Ibrahim*, 243 S.W.3d 452, 456 (Mo. Ct. App. 2007) (citation omitted).

Here, the Policy clearly prohibits Plaintiff’s recovery of any amount awarded as punitive damages in the underlying action. The Policy language on this issue is clear, unambiguous, and should be enforced. Plaintiff does not dispute this point. (Doc. # 66, p. 4) (“Plaintiff does not controvert that the American Family policy, Number 15-BL2465-01, excludes coverage for punitive

damages. Plaintiff cannot seek recovery of the punitive damage portion of his Judgement under Missouri law as well as under the terms of the defendant American Family's policy.") Therefore, it is

ORDERED that American Family's Motion for Partial Summary Judgment is **GRANTED**.

s/ Gary A. Fenner

Gary A. Fenner, Judge
United States District Court

DATED: May 27, 2010